

CITY OF ALAMEDA

Memorandum

To: Honorable Mayor and
Members of the City Council

From: Lisa Goldman
Acting City Manager

Date: February 1, 2011

Re: Introduce an Ordinance to Amend the Alameda Municipal Code by Adding
Section 3-7 at Article I, (Finance) of Chapter III, (Finance and Taxation)
Regulating Holders of State Video Franchises

BACKGROUND

The City's non-exclusive cable television franchise was adopted in July 1982 to franchise holder United Cable Television of Alameda, which eventually transferred to Comcast of Alameda. On September 29, 2006, Assembly Bill 2987, the Digital Infrastructure and Video Competition Act of 2006 (DIVCA), was approved. The purpose of DIVCA is to create a streamlined process for granting video service franchises to foster new technology, encourage competition, and expand customer choice. It also permanently changes the franchising and regulatory structure for the provision of cable television and other video services in California. Under DIVCA, video service franchises are granted exclusively by the California Public Utilities Commission (CPUC) rather than local franchising entities. Although the City is not the franchising authority, it has specific rights and responsibilities under DIVCA with respect to any holder of a State franchise. With the adoption of DIVCA, Alameda's Municipal Code (AMC) needs to be amended to implement the State law under which a video service provider can provide services in Alameda after obtaining a State franchise.

In March 2007, AT&T was issued a State franchise to provide video services to Alameda. In October 2008, Comcast notified the City that it received the State franchise and was providing video services. A state-issued franchise is valid for ten years after the date of issuance, and the holder shall apply for a renewal of the State franchise for an additional ten-year period if it wishes to continue to provide video service to Alameda.

DISCUSSION

DIVCA allows a city to charge a franchise fee of up to five percent of the gross revenues (as defined in DIVCA) of State video franchise holders providing service within the city for use of its public right-of-way. The proposed ordinance clarifies that the franchise fee for the City of Alameda is five percent of gross revenues. The City has been receiving a five percent franchise fee since 1982.

Cities are also entitled to an additional fee of up to one percent of the gross revenues for the support of Public, Education, and Government (PEG) cable channels, provided the City has enacted an ordinance establishing such fee. The proposed ordinance sets this fee at one percent of the gross revenue.

DIVCA also requires cities to monitor customer service standards for state video franchisees, but cities are limited to enforcing only federal and state customer service standards. A city may only impose fines for violations of those standards if it enacts an ordinance or resolution establishing a fine schedule as outlined by DIVCA. The proposed ordinance calls for the maximum fines allowed under State law. These fines are \$500 per day for the first violation (not to exceed \$1,500), \$1,000 per day for a second violation within twelve months (not to exceed \$3,000), and \$2,500 per day for a third and further violation within 12 months (not to exceed \$7,500). One-half of the revenues received from fines are to be placed in a Digital Divide Account as described in CPUC Code 280.5. The remaining one-half is to be placed in the general fund to support the assessment of customer service standard.

The proposed ordinance also authorizes the City to audit a state franchisee's business records to ensure compliance with the fee requirements of the ordinance. In addition, when applying for a new state franchise, entities must provide a copy of its application and any amendments to the City. Lastly, the ordinance allows the City to hire a independent third party auditing firm on a flat fee or contingency basis.

FINANCIAL IMPACT

Adoption of the proposed ordinance is estimated to provide the City with an additional \$175,000. This revenue is required to be placed in a separate account and may only be used to replace or upgrade existing equipment for programming and broadcasting of the PEG channels. The City will also receive revenues from fines assessed; however, it is difficult to estimate the amount of this additional revenue.

MUNICIPAL CODE/POLICY DOCUMENT CROSS REFERENCE

This Ordinance will add a new division and section to Chapter III, Finance and Taxation, Article II, Taxation.

ENVIRONMENTAL REVIEW

In accordance with the California Environmental Quality Act (CEQA), this project is found to be Statutory Exempt under CEQA Guidelines, Section 15273, Rates, Tolls, Fares, and Charges.

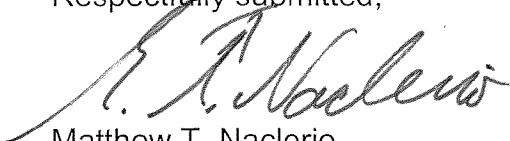
Honorable Mayor and
Members of the City Council

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RECOMMENDATION

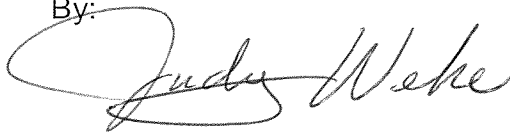
Introduce an ordinance to amend the AMC by adding Section 3-7 at Article I, (Finance) of Chapter III, (Finance and Taxation) Regulating Holders of State Video Franchises.

Respectfully submitted,



Matthew T. Naclerio
Public Works Director

By:



Judy Wehe
Senior Management Analyst

Approved as to funds and account,



Fred Marsh
Controller

CITY OF ALAMEDA ORDINANCE NO. _____
New Series

Approved as to Form

City Attorney

AMENDING THE ALAMEDA MUNICIPAL CODE BY ADDING SECTION 3-7 AT
ARTICLE I (FINANCE) OF CHAPTER III (FINANCE AND TAXATION)
REGULATING HOLDERS OF STATE VIDEO FRANCHISES

WHEREAS, the Digital Infrastructure and Video Competition Act of 2006 (the "Act") went into effect on January 1, 2007; and

WHEREAS, under the Act, the State of California, through the Public Utilities Commission, has the sole authority to issue statewide franchises, impose user and application fees and establish franchise fees; and

WHEREAS, under the Act, the City of Alameda has the authority to manage the rights of way, to regulate the payment of Public, Education, and Government ("PEG") fees, to require the provisions of PEG channels and to enforce federal and state customer service standards; and

WHEREAS, the City of Alameda desires to exercise that authority and to facilitate the implementation of the Act by setting forth regulations for the provision of video service by state franchise holders within the City.

BE IT ORDAINED by the City Council of Alameda that:

Section 1. The Alameda Municipal Code is hereby amended by adding a new Section 3-7 to Article I of Chapter III, which shall read as follows:

3-7 Regulation of State Video Franchise Holders.

3-7.1 Purpose and Authority.

This section is designed to regulate video service providers holding state video franchises and operating within the City of Alameda. This section is enacted pursuant to the authority provided in the Digital Infrastructure and Video Competition Act of 2006 (Public Utilities Code Section 5800 et seq.) as such legislation may hereafter be amended and supplemented by regulations published thereunder.

3-7.2 Definitions.

Unless the term is specifically defined in this section or the contrary is stated or clearly appears from the context, the definitions set forth in the Digital Infrastructure and Video Competition Act of 2006 (Public Utilities Code Section 5800 et seq.) shall govern the interpretation of this section.

3-7.3 State Video Franchise and PEG Fees.

- (a) Any state video franchise holder operating within the boundaries of the City of Alameda shall pay to the City a franchise fee equal to five percent (5%) of the gross revenues of that state video franchise holder.
- (b) Any state video franchise holder operating within the boundaries of the City shall pay to the City an additional fee equal to one percent (1%) of the gross revenues of that state video franchise holder, which fee shall be used by the City for any Public, Educational and/or Governmental (PEG) purposes consistent with state and federal law.
- (c) For purposes of subsections (a) and (b) above, the term "gross revenues" shall be defined as set forth in Public Utilities Code Section 5860.

3-7.4 Audit Authority.

Not more than once annually and in a manner consistent with Public Utilities Code Section 5860, the City may examine and perform an audit of the business records of the holder of a state video franchise to ensure compliance with subsection 3-7.3, above.

3-7.5 Customer Service Penalties.

- (a) The holder of a state video franchise shall comply with all applicable state and federal customer service and protection standards pertaining to the provision of video service.
- (b) The City shall monitor compliance by state video franchise holders with state and federal customer service and protection standards. The City shall provide to the state video franchise holder written notice of any material breaches of applicable customer service and protection standards, and shall allow the state video franchise holder thirty (30) days from receipt of the notice to remedy the specified material breach. Material breaches not remedied within the 30-day time period will be subject to the following monetary penalties to be imposed by the City in accordance with state law. For purposes of this subsection, "material breach" shall be defined as set forth in Public Utilities Code Section 5900.
 - (1) For the first occurrence of a violation, a monetary penalty of \$500 shall be imposed for each day the violation remains in effect, not to exceed \$1,500 for each violation.
 - (2) For a second violation of the same nature within twelve (12) months, a monetary penalty of \$1,000 shall be imposed for each day the violation remains in effect, not to exceed \$3,000 for each violation.
 - (3) For a third or further violation of the same nature within twelve (12) months, a monetary penalty of \$2,500 shall be imposed for each day the violation remains in effect, not to exceed \$7,500 for each violation.

- (c) A state video franchise holder may appeal a monetary penalty assessed by the City within sixty (60) days by providing written notice to the City Manager. The City Manager or his or her designee shall appoint a hearing officer, who shall promptly hold an administrative hearing. After relevant evidence and testimony is received, the hearing officer shall either uphold, modify, or vacate the monetary penalty. The hearing officer's decision on the imposition of a monetary penalty shall be final.

3-7.6 City Response to State Franchise Applications.

Applicants for state video franchises within the boundaries of the City of Alameda must concurrently provide to the City complete copies of any application or amendments to applications filed with the California Public Utilities commission. One complete copy must be provided to the City Clerk. The City may provide any appropriate comments to the Commission regarding the application or amendment.

Section 2. This ordinance shall be in full force and effect from and after the expiration of thirty (30) days from the date of its final passage.

Section 3. Severability Clause. It is the declared intent of the City Council of Alameda that if any section, subsection, sentence, clause, phrase, or provision of this ordinance is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be so construed as to render invalid or unconstitutional the remaining provisions of this ordinance.

Presiding Officer of the City Council

Attest:

Lara Weisiger, City Clerk

* * * * *

I, the undersigned, hereby certify that the foregoing Ordinance was duly and regularly adopted and passed by Council of the City of Alameda in regular meeting assembled on the _____ day of _____, 2011, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this _____ day of _____, 2011.

Lara Weisiger, City Clerk
City of Alameda